

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>MATTHEW GILMER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 3:10-cv-0969</b>
<b>v.</b>	)	<b>JUDGE CAMPBELL</b>
	)	
<b>T.R. FRANKLIN, INC. d/b/a</b>	)	<b>MAGISTRATE JUDGE BROWN</b>
<b>TIN ROOF II or TIN ROOF 2, JASON</b>	)	<b>JURY DEMAND</b>
<b>SHEER, KYLE McPHEE, GREG</b>	)	
<b>ROMINE, LARSEN McCOLL</b>	)	
<b>PARTNERS, LP, SMW CAROTHERS,</b>	)	
<b>LLC, NDG CAROTHERS LLC,</b>	)	
<b>NDG PROPERTIES, INC., GREGORY</b>	)	
<b>HANSON, STEWART CROSS, JOSHUA</b>	)	
<b>EDWARDS, and IAN HERRIN,</b>	)	
	)	
<b>Defendants.</b>	)	

**NDG PROPERTIES, INC.'S MOTION FOR SUMMARY JUDGMENT**

**COMES NOW**, Defendant NDG Properties, Inc. (“NDG”), by and through counsel, and respectfully moves the Court pursuant to F.R.C.P. 56 for the entry of summary judgment in its favor dismissing the Complaint of Matthew Gilmer (“Mr. Gilmer”) as to NDG. In support thereof, Movant would state that there are no genuine issues of material fact and that it is entitled to judgment in its favor as a matter of law.

It is submitted that NDG breached no duty owed to Mr. Gilmer to provide security for the benefit of Tin Roof II patrons and therefore, Plaintiff’s claim against NDG must fail as a matter of law.

Respectfully submitted,  
**SMITH & TOMKINS**

/s/ Warren M. Smith  
**WARREN M. SMITH, # 10622**  
214 Second Avenue, North, Suite 100  
Nashville, TN 37201  
(615) 256-1280

*Attorney for Defendant NDG Properties, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20<sup>th</sup> day of September, 2012 a copy of the forgoing Motion for Summary Judgment was electronically filed. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system. The parties to be served are as follows:

Lisa Paige Binder, Esq.  
Philip Norman Elbert, Esq.  
**Neal & Harwell**  
150 4<sup>th</sup> Avenue North  
2000 First Union Tower  
Nashville, TN 37219-2498  
[lbinder@nealharwell.com](mailto:lbinder@nealharwell.com)  
[pelbert@nealharwell.com](mailto:pelbert@nealharwell.com)

Steven H. Meisner, Esq.  
**Brewer, Krause, Brooks, Chastain & Burrow, PLLC**  
P. O. Box 23890  
Nashville, TN 37202-3890  
[smeisner@bkblaw.com](mailto:smeisner@bkblaw.com)

Mr. Gary R. Wilkerson, Esq.  
**Law Office of Gary R. Wilkerson**  
Suite 290A  
7100 Commerce Way  
Brentwood, TN 37027-2829  
[wilking2@nationwide.com](mailto:wilking2@nationwide.com)

/s/ Warren M. Smith  
**WARREN M. SMITH**